IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10763 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIDDHI PRODUCTS

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:

MR MIHIR H JOSHI for Petitioners
MR HARESH J TRIVEDI for Respondent No. 1
MR MAULIN R RAVAL for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

Rule. Mr. H.J. Trivedi, learned counsel waives service of notice of rule on behalf of respondent No. 1. Mr. Maulin Raval, learned counsel waives service of notice of rule on behalf of respondent No. 2. Upon consensual request by the learned advocates, in view of the urgency and with the consent of parties, the matter is taken up for final hearing today.

2. By means of filing of this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction for quashing and setting aside the orders of the respondent No. 1 Board rejecting the application for consent made by the petitioner under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, (the "Water Act" for brevity) dated 21.10.1999 and 26.3.2000 and under the Air (Prevention & Control of Pollution) Act, 1981, (the "Air Act" for brevity) dated 14.12.1999 and 29.4.2000 respectively. The petitioner has also challenged the orders dated 22.2.2000 and 1.5.2000 passed by the respondent Board directing the petitioner to stop industrial activity. The petitioner has further challenged the direction issued by the respondent Board on 28.8.2000 under Section 33-A of the Water Act prohibiting the petitioner from manufacturing the products specified in the order and to close the operation of the plant till the consent of the Board was obtained and an adequate treatment plant was installed and efficiently operated.

3. The petitioner is a partnership firm and is engaged in the manufacture of Meta Phenyline Diamine (MPD) and Paratoludine at its factory situated at Panoli. The petitioner was granted Site Clearance Certificate on 31.12.1997. After inspection of the plant as well as of the effluent treatment equipment installed by the petitioner the respondent Board granted a No Objection Certificate for the purpose on 30.11.1998. The petitioner made necessary applications for obtaining consent under the Water Act as well as the Air Act on 7.7.1999 and 1.10.1999 respectively. It is the case of the petitioner that since the production of MPD had become unviable in the meantime, the petitioner also included the product Meta Di Nitro Benzene (MDNB) in the consent applications. For the purpose of processing these applications, the respondent collected a sample of effluent and a report of the analysis was prepared on 30.7.1999. The applications for consent made by the petitioner referred to above were rejected by the

respondent Board by orders dated 21.10.1999 respectively on the ground that the petitioner had started production of new products without the permission of the Board. On the same ground the respondent Board issued a direction on 22.2.2000 to the respondent to stop its industrial activity.

4. In the meantime the petitioner had reapplied for consent under the aforesaid Acts on 31.12.1999. However, the petitioner applied for consent only in respect of MPD and Paratoludine which were the products covered in the Site Clearance Certificate and the No Objection Certificate issued by the Board. It may be noted that the petitioner had also made a number of representations to the respondent Board for permitting the change of product inter alia on the ground that the manufacturing of the original products had become unviable and that the manufacturing of the new product MDNB did not result in increasing the pollution potential as the report of the analysis dated 30.7.1999 indicated that the effluent was meeting the prescribed parameters.

5. By orders dated 26.3.2000 and 29.4.2000 the respondent Board rejected the applications for consent made by the petitioner under the Air Act and the Water Act respectively. The sole ground for rejecting these applications was that the rejection was as per the directives dated 21.10.1999 of this Court in Special Civil Application No. 4473 of 1997 at that stage. The authorisation applied for by the petitioner under the provisions of the Hazardous Waste (Management & Handling) Rules, 1989, was granted to the petitioner on 27.4.2000. The respondent Board issued a direction on 1.5.2000 to the petitioner not to start any industrial activity on account of the rejection of its consent applications. On 28.8.2000 the respondent issued directions under Section 33A of the Water Act prohibiting the petitioner from manufacturing the new products and to close the operation of its industrial plant till consent of the Board was obtained. Pursuant to this order the supply of electricity and water to the unit has been disconnected and the unit is closed.

6. On 11.9.2000 the petitioner again applied for consents under the Water Act and the Air Act which applications are pending. The petitioner addressed a letter dated 15.9.2000 and represented to the respondent Board to suspend the directions of closure issued on 28.8.2000 and also submitted an undertaking dated 12.9.2000 on stamp paper not to manufacture any other product then that specified in the consent applications

which undertaking has been annexed to the petition. Despite these representations the petitioner apprehends that the applications for consent made by the petitioner would be rejected once again only on the ground of the directions dated 21.10.1999 issued by this Court in Special Civil Application No. 4473 of 1997. In such an eventuality, the petitioner apprehends that it will not be able to satisfy one of the principal conditions for revoking the closure order issued by the respondent Board under Section 33A of the Water Act that is of obtaining consent and therefore the conditional closure would become permanent causing grievous prejudice and hardship to the petitioner. Under these circumstances the petitioner has filed the present petition.

7. We may mention that one M/s. Amar Pigments, through its partner Ajay Desai had filed Special Civil Application No. 81/2000 against the Gujarat Pollution Control Board claiming similar reliefs. Therein, the Division Bench (Coram: M.S. Shah and R.R. Tripathi, JJ) had issued rule and given interim directions to the respondent Board by an order dated 8.2.2000 to consider the grant of No Objection Certificate as prayed for by M/s. Amar Pigments, without taking into account the directions of this Court on 21.10.1999, in accordance law. The Court held inter alia that since the petitioner therein had made substantial investment prior to the order of this Court dated 21.10.1999, the respondent Board was not justified in refusing to consider the application on its own merits. Pursuant to this order the Board had granted the No Objection Certificate to the unit. We are informed that in the aforesaid petition, rule has been made absolute in the above terms. Thereafter, a number of writ petitions were filed by aggrieved parties claiming to have set up their units before 21.10.1999 and in all such matters similar orders/directions have been issued by this Court.

8. Adverting to the facts of this case, we find that the Site Clearance Certificate was granted on 31.12.1997 and the No Objection Certificate was also issued on 30.11.1998. The applications for consents are made much prior to 21.10.1999 and in fact the report of the analysis of the sample of effluent is also dated 30.7.1999 indicating that the effluent was meeting the parameters prescribed by the Board. The factual position that the petitioner had established its unit and installed an effluent treatment plant much prior to 21.10.1999 is not in dispute. Therefore, it is the common case of parties that the unit in question is not covered by the directions issued by this Court in Special

Civil Application No. 4473 of 1999. The rejection of the consent applications by orders dated 26.3.2000 and 29.4.2000 and the closure order dated 1.5.2000 has been done by the respondent Board under the erroneous belief that the unit was covered under the directions issued by the Court on 21.10.1999 whereas the fact is that it had been set up much prior to 21.10.1999 as indicated above and therefore the applications could not have been rejected and the closure order could not have been passed on such basis.

9. In so far as the closure order dated 22.2.2000 and the directions under Section 33A of the Water Act dated 28.8.2000 are concerned, we note that the same have been issued by the respondent Board mainly on the ground that the petitioner had commenced manufacturing of new products not covered in the Site Clearance Certificate or the No Objection Certificate granted to it. The petitioner has made a number of representations to the respondent which have been annexed to the petition explaining that the manufacturing of the products specified in the above referred certificates had become unviable, that the manufacture of the new products did not result in the effluent not meeting the prescribed parameters and that in any case the respondent Board could always consider granting permission for changing the product particularly since it was an intermediate for manufacturing MPD which was specified in the aforesaid certificates. At this stage, we are not inclined to go into this question. In our opinion, the interest of justice would be served if directions are issued to the respondent to consider the representations made by the petitioner to the respondent Board for change of product and/or for expanding its product line in accordance with law and further directing that the same shall not be rejected only on the ground of directions having been issued by this Court in Special Civil Application No. 4473 of 1997 which as held above are not applicable to the facts of the present case.

10. Mr. Mihir Joshi, learned counsel for the petitioner, then contends that the directions under Section 33A of the Water Act dated 28.8.2000 be suspended and the petitioner be permitted to carry on its business in accordance with law. On the other hand, Mr. Trivedi states that the directions were issued because the unit was manufacturing new product not covered under the certificates and therefore the order under Section 33A is valid. After having taken into account the facts and circumstances of the case and more particularly the fact that the petitioner has given an undertaking to the

respondent Board not to manufacture any other product then that specified in the consent application and the fact that the orders of the Board dated 26.3.2000 and 29.4.2000 rejecting the consent applications filed by the petitioner have been quashed and set aside. We are of the opinion that the continuance of the directions dated 28.8.2000 is not warranted.

11. In the result, the petition succeeds in part. The orders dated 26.3.2000 and 29.4.2000 rejecting the applications for consent under the Air Act and the Water Act respectively and the order dated 1.5.2000 for closure of the unit are hereby quashed and set aside. Since the petitioner has reapplied for consent on 11.9.2000 the respondent Board is directed to consider the same in accordance with law and the said applications for consent shall not be rejected only on the basis of directions issued in Special Civil Application No. 4473 of 1997 dated 21.10.1999 which are admittedly not applicable in the facts of the present case. The respondent Board is directed to consider the representations made by the petitioner for change of product and/or for expanding its product line, in accordance with law and as expeditiously as possible and the same shall not be rejected only on the ground of directions having been issued by this Court in Special Civil Application No. 4473 of 1997. The order dated 28.8.2000 under Section 33A of the Water Act directing closure of the Unit, is quashed and set aside. The respondent Board shall ensure that supply of water and electricity is reconnected and it will be open for the petitioner to carry on manufacturing activity strictly in accordance with law.

12. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

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